

STATE OF TENNESSEE

Office of the Attorney General



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Reply to:
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Post Office Box 20207
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October 6, 2003

Honorable Deborah Taylor Tate
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

IN RE: IMPLEMENTATION OF THE FEDERAL COMMUNICATIONS
COMMISSION'S TRIENNIAL REVIEW ORDER — 9 MONTH PROCEEDING —
SWITCHING, DOCKET NO. 03-00491

Dear Chairman Tate:

Enclosed is an original and thirteen copies of the Consumer Advocate and Protection Division's Comments Regarding Definitions of Geographic Markets. Kindly file same in this docket. Copies are being sent to all parties of record. If you have any questions, kindly contact me at (615) 532-2590. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Shirley".

JOE SHIRLEY
Assistant Attorney General

cc: All Parties of Record

#66649

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**IMPLEMENTATION OF THE FEDERAL
COMMUNICATION COMMISSION'S
TRIENNIAL REVIEW ORDER — 9
MONTH PROCEEDING — SWITCHING**

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DOCKET NO. 03-00491

**CONSUMER ADVOCATE'S COMMENTS REGARDING
DEFINITION OF GEOGRAPHIC MARKETS**

Comes now the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), pursuant to the *Notice of Status Conference and Filing* issued by the Hearing Officer in the above-styled docket on October 1, 2003, and hereby files the *Consumer Advocate's Comments Regarding Definition of Geographic Markets*.

The Consumer Advocate appreciates the importance of establishing appropriate geographic markets for the purpose of implementing the mandates of the Triennial Review Order ("TRO") issued recently by the Federal Communications Commission ("FCC"). Under the TRO's impairment framework, determination of these markets will contribute substantially to the development of Tennessee's competitive landscape in the years ahead. Given the importance of this determination, the Consumer Advocate is of the opinion that the Tennessee Regulatory Authority ("TRA") should arrive at its findings and conclusions concerning geographic markets after thorough review and careful consideration of relevant market data and information.

The TRO identified certain factors that the TRA must consider when defining each market

on a granular level. These factors include: (1) location of customers actually being served by competitors; (2) variation in factors affecting competitors' ability to serve each group of customers; and (3) competitors' ability to target and serve specific markets economically and efficiently using currently available technologies. TRO at ¶ 495. In addition, the TRO directed the states to examine the utilization of switches deployed by competitors and third-party wholesalers. *Id.* The TRO also cautioned the states against defining a market so narrowly that competitors would be unable to take advantage of available scale and scope economies from serving a wider market. *Id.*


The TRO elaborated further that the states' market definition analysis may consider information such as variances in UNE rates, differentials in retail rates, distribution of high-revenue customers, cost variances in provisioning service, and assorted wire center characteristics and capabilities. TRO at ¶ 496. Additionally, the TRA may choose to consider other relevant data, which could include, for instance, the general business plans of market participants and the purchasing behavior of customers (especially the customers' propensity to purchase particular service bundles and packages).

Such information is currently in the hands of industry. The Consumer Advocate, therefore, is not in a position at this time to form opinions or make specific recommendations concerning the definition of geographic markets. The Consumer Advocate would welcome the opportunity to provide substantive comments after it has collected and interpreted specific market data and information. Accordingly, the Consumer Advocate supports a process that would allow interested parties to conduct discovery on this issue and to file comments or testimony within a reasonable time after the conclusion of discovery.

The Consumer Advocate recognizes that implementation of the TRO's mandates within the

nine-month time frame provided will take substantial efforts from everyone involved, and it further recognizes that the issue of geographic markets must be addressed during the earlier stages of this process so that the impairment analyses may proceed in a timely and orderly fashion. Nonetheless, the Consumer Advocate is hopeful that a workable schedule can be developed to permit a two-step approach where a market analysis is conducted during the first phase, followed by the requisite impairment analyses and evaluations. It is the Consumer Advocate's opinion that the benefits derived from a more thorough and focused evaluation of markets afforded by such a schedule will provide the best overall results.

Respectfully submitted,


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615-532-2590

Dated: October 6, 2003

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been served via electronic mail or first-class U.S. mail, postage prepaid, this 6th day of October, 2003, upon:

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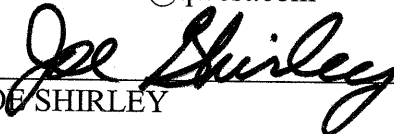
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